

**IN THE COURT OF APPEALS**

**STATE OF ARIZONA**

**DIVISION TWO**

OFFICE OF THE COCHISE COUNTY  
ATTORNEY,

APPELLANT,

v.

DAVID MORGAN,

APPELLEE.

Case No. 2 CA-CV 2018-0093

Cochise County Superior  
Court No. CV 201700670

**MOTION TO APPEAR AS  
AMICI CURIAE**

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The American Civil Liberties Union of Arizona (“ACLU of Arizona”), the Reporters Committee for Freedom of the Press, and the Society of Professional Journalists move this Court for leave to file the accompanying lodged amicus curiae brief. This motion is made pursuant to Arizona Rule of Civil Appellate Procedure 16(b)(1)(C) and (b)(2).<sup>1</sup> Counsel for proposed amici have reviewed the trial-level proceeding transcripts and the appellate briefing. Proposed amici’s interests in this litigation are detailed below.

The ACLU of Arizona, the state affiliate of the national American Civil Liberties Union (“ACLU”), is a statewide nonpartisan, nonprofit organization of over 22,000 members throughout Arizona dedicated to protecting the constitutional rights of all. The fight for freedom of speech has been a bedrock of the ACLU’s mission since the organization was founded in 1920, driven by the need to protect the constitutional rights of conscientious objectors and anti-war protesters. The ACLU’s work to protect freedom of expression has continued over the last almost-100 years, including consistent efforts to combat censorship of private citizens and the media. Among that panoply of rights are the rights of the media to report on and publish matters of public importance, which are protected by the First Amendment

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<sup>1</sup> Defendant-appellee David Morgan, who represented himself in the trial-court proceedings and is continuing to represent himself on appeal, has consented to proposed amici’s brief. The Cochise County Attorney’s Office, as of the time of this filing, has not responded to a request for consent.

and the Arizona Constitution. The ACLU of Arizona frequently files *amicus curiae* briefs in Arizona and federal courts on a wide range of civil liberties and civil rights issues.

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide *pro bono* legal representation, *amicus curiae* support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

Society of Professional Journalists ("SPJ") is dedicated to improving and protecting journalism. It is the nation's largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists, and protects First Amendment guarantees of freedom of speech and press. SPJ is a non-stock corporation with no parent company.

Amici have a strong interest in protecting the rights of the news media and speakers generally, and in ensuring that Arizona courts preserve the freedom of the

press by enabling the publication of information of public importance consistent with the constitutional rights of the press. This case puts such issues squarely before this Court.

Amici offer this brief in support of appellee David Morgan because the issue presented involves one of the fundamental objectives of amici, to protect the free speech rights guaranteed to members of the news media by the federal and state Constitutions, and to resist efforts to constrain such rights. Specifically, prior restraints or other restrictions on the publication of lawfully obtained grand jury information have a direct, substantial impact on constitutional rights.

The order requested by the Cochise County Attorney's Office, which would require Morgan to take down from his website grand jury transcripts that have already been published, would be an unlawful restriction on the publication of lawfully obtained information. Amici's proposed brief provides information to the Court about why the requested order is unconstitutional and why the lower court's ruling refusing to impose the requested restriction should be upheld.

Accordingly, amici move this Court to grant the motion and allow them to file the amicus curiae brief that is lodged with the Court.

Respectfully submitted this 12th day of February 2019.

By /s/Kathleen E. Brody

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## **CERTIFICATE OF SERVICE**

I hereby certify that on February 12, 2019, I electronically filed Amicus Curiae's Motion for Leave to file Amicus Brief with the Clerk of the Court of Appeals, Division Two, by using the Court's e-filing system.

Copies of this Motion were electronically mailed this date to:

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By /s/ Kathleen E. Brody  
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